HIGH COURT OF HIMACHAL PRADESH AT SHIMLA

Cr.A.No. 499 of 1999
Reserved on: 22.5.2007
Decided on: 15.6.2007

State of Himachal Pradesh .....Appellant.

Versus

Mukesh Kumar .....Respondent.

Coram:

The Hon'ble Mr.Justice V.K. Ahuja, Judge.

Whether approved for reporting? No.

For the appellant: Mr.Ashutosh Burathoki, Additional Advocate General.

For the respondent: Mr.Dharamvir Sharma, Advocate.

V.K. Ahuja, J:

This is an appeal filed against the judgment of the court of learned JMIC, Court No.1, Mandi, dated 26.5.1999, vide which the respondent was acquitted of the charge under Section 278 and 304-A IPC.

Briefly stated the facts of the case are that on 10.6.1995, at about 4.00 p.m. near Chakar Puli, the accused was driving the bus No.DL-IP-6599 coming from Sundernagar side towards Ner Chowk. Deceased Nika Ram

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[1]. Whether reporters of Local papers may be allowed to see the judgment? Yes.

alongwith Shobha Ram were walking on their left side when the bus driven by the accused struck against Nikka Ram, who fell on the road and was crushed under the tyre of the bus. Nikka Ram suffered grievous injury on his left leg and was shifted to the Hospital where he died. A case was registered on the basis of the statement made by Shobha Ram who was accompanying the deceased and after investigation, the challan was filed before the learned trial court, who tried the respondent under the above sections resulting in his acquittal.

I have heard Shri Ashutosh Burathoki, learned Additional Advocate General for the appellant and Mr.Dharamvir Sharma, learned counsel for the respondent and have also gone through the record.

The submissions made by the learned Additional Advocate General were that the identity of the respondent had been established from the statement of PW-8 Todar Mal, but his statement was not relied upon by the trial court wrongly and the conclusion drawn by the learned trial court cannot be said to be correct and as such those findings are liable to be reversed.

On the other hand, learned counsel for the respondent had supported the impugned judgment for the reasons given therein supplementing it by the submission that the statement of PW-8 Todar Mal was improbable, who had not been supported by the other eye witness who had gone with him on the scooter while chasing the bus and three other eye witnesses had not identified the respondent to be the person who was driving the bus at the relevant time. It was submitted that the conclusion drawn by the learned trial court cannot be said to be perverse and if two views are possible from the evidence and the one

view taken by the trial court was not perverse, the appeal is liable to be dismissed.

The foremost question to be determined was the identity of the person driving the bus which struck with the deceased. The second question to be determined was as to whether there is evidence to show that the bus was being driven rashly or negligently by the driver. Coming to the evidence of PW-3 Shobha Ram, father-in-law of deceased Nikka Ram, who was accompanying the deceased at the relevant time when the bus struck with the deceased who fell down and his leg was crushed under the tyre of the bus. PW-3 Shobha Ram has clearly stated that being an illiterate, he could not note down the number of the bus and has nowhere stated that the respondent was driving the bus at the relevant time. PW-4 Premi Devi and PW-5 Burfi Devi were present at the spot, but they have turned hostile and had not identified the respondent to be the person who was driving the bus at that time. They have stated that they learnt about the occurrence afterwards but had not seen the accident.

The only relevant witness can be said to be PW-6 Todar Mal, who has stated that he was sitting in his shop at a distance of 60 metres and he chased the bus on a scooter belonging to one Shri Ram Singh Guleria and he was the pillion rider on that scooter. Thus, he chased the bus and stopped the bus but his statement has not been relied upon by the learned trial court for some reasons which cannot be said to be perverse in any manner. The first reason given was that he was at a distance of 60 metres from the place of occurrence and had come out of his shop after the accident and followed the bus on his scooter. He nowhere sated that he noted down the bus number at that time of

the bus involved in the accident and, therefore, stopped the bus being driven by the respondent at that time. The other reason given by the learned trial court was that he has stated that he apprehended the bus at some distance, which is contrary to the version of PW-2 Anant Ram, H.C., who was the recovery witness and stated that the bus was taken in possession at the spot. The person who drove the scooter on which PW-6 Todar Mal chased the bus namely Ram Singh Guleria was also not examined. The learned trial court also referred to the contradiction in the statement of PW-3 Shobha Ram in the court and as stated in the statement made by him under Section 154 Cr.P.C. as well as the fact that the statement of the principal witness PW-6 was recorded on the next day and he was held to be a planted witness by the learned trial court though there was no material on record to show as to why his statement was not recorded on the same day. All these facts weighed in the mind of the learned trial court in holding that the identity of the driver of the bus was not established. Not even a single witness has stated either those present on the spot or sitting in the bus as passenger that this bus which was bound for Mandi or any other specific place had struck with the deceased resulting in the death of the deceased subsequently. The only thing has come up on the record is the statement of PW-6 who followed the bus, stopped the bus driver and the respondent was arrayed as an accused without there being any corroborative evidence which could establish the identity of the respondent that he was driving the bus at the relevant time which struck Nikka Ram resulting in his death. In a criminal case, no presumption can be drawn that the respondent was driving the bus at the relevant time until and unless there is specific evidence on record which

establishes the identity of the driver of the bus beyond any reasonable doubt. Apart from this, there was no specific evidence in regard to rash or negligent act of the respondent and no witness has stated in this regard. Thus, once the identity of the driver was not established beyond any reasonable doubt and the trial court had come to the conclusion that the respondent was not proved to be driving the vehicle at the relevant time, the said findings cannot be said to be perverse in view of the reasoning given by the learned trial court and as such those findings are not liable to be reversed in appeal filed against acquittal. There is no merit in the appeal filed by the appellant which is dismissed accordingly. Bail bonds furnished by the respondent shall stand discharged. Record of the trial court be returned.

(V.K. Ahuja), J.

June 15, 2007 (trs)